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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, v. MATTHEW CHARLES KENNEDY (1), Defendant.	Criminal Case No. 08CR0650-JM **UNITED STATES' RESPONSE AND OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY; MOTION TO DISMISS INDICTMENT FOR LACK OF PROBABLE CAUSE; MOTION TO SUPPRESS EVIDENCE AND STATEMENTS; MOTION FOR WIRETAP EVIDENCE; MOTION FOR JOINDER; MOTION TO SUPPRESS IDENTIFICATION; MOTION FOR LEAVE TO FILE FURTHER MOTIONS** Date: May 30, 2008 Time: 11:00 a.m. Honorable: Jeffrey T. Miller

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COMES NOW the plaintiff, United States of America, by and through its counsel, Karen P. Hewitt, United States Attorney, and Steven De Salvo, Assistant United States Attorney, and hereby files its Response and Opposition to Defendant's Motion for discovery, motion to dismiss, motion to suppress evidence and statements, motion for wiretap evidence, and motion for joinder, motion to suppress identification, motion for leave to file further motions. This Response and Opposition is based upon the files and records of the case together with the attached statement of facts and memorandum of points and authorities.

I

STATEMENT OF THE CASE

On March 11, 2008, Defendant Matthew Charles Kennedy was arraigned on a 9-count Indictment charging him and certain co-defendants with three counts of Harboring Illegal Aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(iii) and (b)(II), two counts of Transportation of Aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii), and three counts of Bringing in Aliens for Financial Gain, in violation of 8 U.S.C. § 1324(a)(2)(B)(ii), one count of Conspiracy to Bring in Aliens for Financial Gain, in violation of 8 U.S.C . § 1324(a)(1)(A)(iii) and (v). Defendant pleaded not guilty.

II

STATEMENT OF FACTS

On February 25, 2008, at approximately 6:15 a.m., Border Patrol Agents at the El Cajon Station received a citizen's tip that aliens were loading into a black metallic car in the Mountain Empire Campground, near Space #13. Border Patrol agents went to the area and saw a black metallic Thunderbird exiting the campground. Four passengers were ducking down in the vehicle in an attempt to hide. An agent stopped the car and found four persons inside the passenger compartment and two others in the trunk. Five of the six persons were aliens who admitted to being in the U.S. illegally; the sixth person was a lawful permanent resident. The driver was identified as co-defendant Lawrence Doss ("Doss").

During the apprehension of Doss and the aliens, Border Patrol agents also went to Space #13 in the campground. The campground manager told agents that he saw Hispanic males exit the trailer at Space #13 and get into the vehicle. Agents then knocked on the door of the recreational trailer, where

Bni and co-defendant Matthew Charles Kennedy ("Kennedy"). Kennedy greeted them at the door. The agents recognized Kennedy as a prolific smuggler in the El Cajon area. Agents told Kennedy that the manager had observed aliens exit the trailer and enter a vehicle. D1 stated that only he and his girlfriend, Bni, were inside the trailer. Kennedy consented to a search. Agents found two aliens hiding in the shower.

In a post-Miranda statement, Kennedy admitted to four prior arrests for transporting aliens, but refused to answer questions about the latest arrest. However, in a prior post-Miranda statement following his arrest for smuggling six illegal aliens two weeks earlier, on February 14, 2008, Kennedy admitted that leaders of a smuggling organization had supplied vehicles to him for smuggling. He stated that, when picking up and transporting aliens, he was in constant radio contact with the smugglers. He also described the structure of the smuggling organization and said he was a "recruiter" of drivers. Defendant also had been arrested on January 27, 2008, for transporting five illegal aliens, and on January 13, 2008, for transporting five illegal aliens. Kennedy's prior arrests are alleged as "overt acts" in the Indictment in this case.

In a post-Miranda statement, Doss stated that he was recruited to transport aliens by an unknown Hispanic male at the Golden Acorn Casino in Campo, California. He agreed to transport aliens for $100. He entered a residential trailer, where he saw Kennedy and Doss and numerous Hispanic persons inside. He stated that he later drove the vehicle loaded with these same Hispanic persons when he was caught.

All seven aliens admitted to being here illegally and stated that they crossed into the United States by foot. They stated that a guide led them to the trailer at the campground. Three aliens admitted paying between $1,500 to $2,700 to be smuggled. Based on photographic lineups, three aliens identified Bni as a woman who answered the door to the trailer and who invited aliens inside. Two aliens also positively identified Bni as a woman who provided food. Two aliens identified Doss as the driver of the vehicle they entered.

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III

UNITED STATES' RESPONSE AND OPPOSITION TO DEFENDANT'S MOTIONS

A. DEFENDANT HAS BEEN PROVIDED WITH ALL DISCOVERY

The United States has provided all written discovery to Defendant. The United States also has provided all video recorded statements by Defendants and material witnesses. As to the specific discovery and evidentiary requests of Defendant, the Government responds as follows:

1. The Government Will Disclose Information Subject To Disclosure Under Rule 16(a)(1)(A) and (B) Of The Federal Rules Of Criminal Procedure

The government has disclosed Defendant's statements subject to discovery under Fed. R. Crim. P. 16(a)(1)(A) (substance of defendant's oral statements *in response to government interrogation*) and 16(a)(1)(B) (defendant's relevant written or recorded statements, written records containing substance of defendant's oral statements *in response to government interrogation*, and defendant's grand jury testimony).

2. The Government Will Comply With Rule 16(a)(1)(D)

The defendant has been provided with his or her own "rap" sheet and the government will produce any additional information it uncovers regarding defendant's criminal record. Any subsequent or prior similar acts of defendant that the government intends to introduce under Rule 404(b) of the Federal Rules of Evidence will be provided, along with any accompanying reports, at the reasonable time in advance of trial.

3. The Government Will Comply With Rule 16(a)(1)(E)

The government will permit defendant to inspect and copy or photograph all books, papers, documents, data, photographs, tangible objects, buildings or places, or portions thereof, that are material to the preparation of defendant's defense or are intended for use by the government as evidence-in-chief at trial or were obtained from or belong to defendant.

Reasonable efforts will be made to preserve relevant physical evidence which is in the custody and control of the investigating agency and the prosecution, with the following exceptions: drug evidence, with the exception of a representative sample, is routinely destroyed after 60 days, and vehicles are routinely and periodically sold at auction. Records of radio transmissions, if they existed, are frequently kept for only a short period of time and may no longer be available. Counsel should contact the Assistant assigned to the case two weeks before the scheduled trial date and the Assistant will make arrangements with the case agent for counsel to view all evidence within the government's possession..

4. The Government Will Comply With Rule 16(a)(1)(F)

The government will permit defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, that are within the possession of the government, and by the exercise of due diligence may become known to the attorney for the government and are material to the preparation of the defense or are intended for use by the government as evidence-in-chief at the trial. Counsel for defendant should contact the Assistant United States Attorney assigned to the case and the Assistant will make arrangements with the case agent for counsel to view all evidence within the government's possession.

5. The Government Will Comply With Its Obligations Under Brady v. Maryland

The government is well aware of and will fully perform its duty under Brady v. Maryland, 373 U.S. 83 (1963) and United States v. Agurs, 427 U.S. 97 (1976) to disclose exculpatory evidence within its possession that is material to the issue of guilt or punishment. Defendant, however, is not entitled to all evidence known or believed to exist that is, or may be, favorable to the accused, or that pertains to the credibility of the government's case. As stated in United States v. Gardner, 611 F.2d 770 (9th Cir. 1980), it must be noted that:

> [T]he prosecution does not have a constitutional duty to disclose every bit of information that might affect the jury's decision; it need only disclose information favorable to the defense that meets the appropriate standard of materiality.

611 F.2d at 774-775 (citations omitted). See also United States v. Sukumolachan, 610 F.2d 685, 687 (9th Cir. 1980) (the government is not required to create exculpatory material that does not exist); United States v. Flores, 540 F.2d 432, 438 (9th Cir. 1976) (Brady does not create any pretrial privileges not contained in the Federal Rules of Criminal Procedure).

6. Discovery Regarding Government Witnesses

Agreements. The Government will disclose the terms of any agreements by Government agents, employees or attorneys with witnesses that testify at trial. Such information will be provided at the time of the filing of the Government's trial memorandum.[1/] The Government will comply with its obligations to disclose impeachment evidence under Giglio v. United States, 405 U.S. 150 (1972).

Bias or Prejudice. The Government will provide information related to the bias, prejudice or other motivation to lie of Government trial witnesses as required in Napue v. Illinois, 360 U.S. 264 (1959).

Criminal Convictions. The Government has produced or will produce any criminal convictions of Government witnesses plus any material criminal acts which did not result in conviction. The Government is not aware that any prospective witness is under criminal investigation.

Ability to Perceive. The government will produce in discovery any evidence that the ability of a government trial witness to perceive, communicate or tell the truth is impaired or that such witnesses have ever used narcotics or other controlled substances, or are alcoholics.

Witness List. The Government will endeavor to provide the defendant with a list of all witnesses which it intends to call in its case-in-chief at the time the Government's trial memorandum is filed, although delivery of such a list is not required. See United States v. Dischner, 960 F.2d 870 (9th Cir. 1992); United States v. Culter, 806 F.2d 933, 936 (9th Cir. 1986); United States v. Mills, 810 F.2d 907, 910 (9th Cir. 1987). Defendant, however, is not entitled to the production of addresses or phone numbers of possible Government witnesses. See United States v. Thompson, 493 F.2d 305, 309 (9th Cir. 1977), cert. denied, 419 U.S. 834 (1974). The defendant has already received access to the names of potential witnesses in this case in the investigative reports previously provided to him.

Witnesses Not to Be Called. The Government is not required to disclose all evidence it has or to make an accounting to the defendant of the investigative work it has performed. Moore v. Illinois, 408 U.S. 786, 795 (1972); see United States v. Gardner, 611 F.2d 770, 774-775 (9th Cir. 1980). Accordingly, the Government objects to defendant's request for discovery concerning any individuals whom the Government does not intend to call as witnesses.

1/ As with all other offers by the Government to produce discovery earlier than it is required to do, the offer is made without prejudice. If, as trial approaches, the Government is not prepared to make early discovery production, or if there is a strategic reason not to do so as to certain discovery, the Government reserves the right to withhold the requested material until the time it is required to be produced pursuant to discovery laws and rules.

Favorable Statements. The Government has disclosed or will disclose the names of witnesses, if any, who have made favorable statements concerning the defendant which meet the requirements of Brady.

Review of Personnel Files. The Government has requested a review of the personnel files of all federal law enforcement individuals who will be called as witnesses in this case for Brady material. The Government has requested that counsel for the appropriate federal law enforcement agency conduct such review. United States v. Herring, 83 F.3d 1120 (9th Cir. 1996); see, also, United States v. Jennings, 960 F.2d 1488, 1492 (9th Cir. 1992); United States v. Dominguez-Villa, 954 F.2d 562 (9th Cir. 1992).

Pursuant to United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991) and United States v. Cadet, 727 F.2d 1452 (9th Cir. 1984), the United States agrees to "disclose information favorable to the defense that meets the appropriate standard of materiality . . ." United States v. Cadet, 727 F.2d at 1467, 1468. Further, if counsel for the United States is uncertain about the materiality of the information within its possession in such personnel files, the information will be submitted to the Court for in camera inspection and review.

Government Witness Statements. Production of witness statements is governed by the Jencks Act (Title 18, United States Code, Section 3500) and need occur only after the witness testifies on direct examination. United States v. Taylor , 802 F.2d 1108, 1118 (9th Cir. 1986); United States v. Mills, 641 F.2d 785, 790 (9th Cir. 1981)). Indeed, even material believed to be exculpatory and therefore subject to disclosure under the Brady doctrine, if contained in a witness statement subject to the Jencks Act, need not be revealed until such time as the witness statement is disclosed under the Act. See United States v. Bernard, 623 F.2d 551, 556-57 (9th Cir. 1979).

The government reserves the right to withhold the statements of any particular witnesses it deems necessary until after the witness testifies. Otherwise, the government will disclose the statements of witnesses at the time of the filing of the government's trial memorandum before trial, provided that defense counsel has complied with defendant’s obligations under Federal Rules of Criminal Procedure 12.1, 12.2, and 16 and 26.2 and provided that defense counsel turn over all "reverse Jencks" statements at that time.

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7. The Government Objects To The Full Production Of Agents' Handwritten Notes At This Time

Although the government has no objection to the preservation of agents' handwritten notes, it objects to requests for full production for immediate examination and inspection. If certain rough notes become relevant during any evidentiary proceeding, those notes will be made available.

Prior production of these notes is not necessary because they are not "statements" within the meaning of the Jencks Act unless they comprise both a substantially verbatim narrative of a witness' assertions and they have been approved or adopted by the witness. United States v. Spencer, 618 F.2d 605, 606-607 (9th Cir. 1980); see also United States v. Griffin, 659 F.2d 932, 936-938 (9th Cir. 1981).

8. All Investigatory Notes and Arrest Reports

The government objects to the defendant's request for production of all arrest reports, investigator's notes, memos from arresting officers, and prosecution reports pertaining to the defendant. Such reports, except to the extent that they include Brady material or the statements of defendant, are protected from discovery by Rule 16(a)(2) as "reports . . . made by . . . Government agents in connection with the investigation or prosecution of the case."

Although agents' reports have already been produced to the defense, the government is not required to produce such reports, except to the extent they contain Brady or other such material. Furthermore, the government is not required to disclose all evidence it has or to render an accounting to defendant of the investigative work it has performed. Moore v. Illinois, 408 U.S. 786, 795 (1972); see United States v. Gardner, 611 F.2d 770, 774-775 (9th Cir. 1980).

9. Expert Witnesses.

Pursuant to Fed. R. Crim. P. 16(a)(1)(G), at or about the time of filing its trial memorandum, the Government will provide the defense with notice of any expert witnesses the testimony of whom the Government intends to use under Rules 702, 703, or 705 of the Fed. R. of Evidence in its case-in-chief. Such notice will describe the witnesses' opinions, the bases and the reasons therefor, and the witnesses' qualifications. Reciprocally, the Government requests that the defense provide notice of its expert witnesses pursuant to Fed. R. Crim. P. 16(b)(1)(C).

10. Information Which May Result in Lower Sentence.

Defendant claims that the Government must disclose information about any cooperation or any attempted cooperation with the Government as well as any other information affecting defendant's sentencing guidelines because such information is discoverable under Brady v. Maryland. The Government respectfully contends that it has no such disclosure obligations under Brady.

The Government is not obliged under Brady to furnish a defendant with information which he already knows. United States v. Taylor, 802 F.2d 1108, 1118 n.5 (9th Cir. 1986), cert. denied, 479 U.S. 1094 (1987); United States v. Prior, 546 F.2d 1254, 1259 (5th Cir. 1977). Brady is a rule of disclosure. There can be no violation of Brady if the evidence is already known to the defendant. Assuming that defendant did not already possess the information about factors which might affect their respective guideline ranges, the Government would not be required to provide information bearing on defendant's mitigation of punishment until after defendant's conviction or plea of guilty and prior to his sentencing date. "No [Brady] violation occurs if the evidence is disclosed to the defendant at a time when the disclosure remains of value." United States v. Juvenile Male, 864 F.2d 641 (9th Cir. 1988).

B. DEFENDANT'S MOTIONS TO DISMISS THE INDICTMENT, TO SUPPRESS STATEMENTS, AND TO SUPPRESS THE IDENTIFICATION SHOULD BE DENIED BECAUSE THEY ARE NOT SUPPORTED BY ANY DECLARATION AND THE UNITED STATES HAS PROVIDED *PRIMA FACIE* EVIDENCE THAT THE GOVERNMENT AGENTS COMPLIED WITH THE LAW

1. Defendant Is Not Entitled to An Evidentiary Hearing In Absence of Declaration

Under Ninth Circuit and Southern District precedent, as well as a Southern District Local Rule, a Defendant is entitled to an evidentiary hearing on a motion to suppress only when the Defendant adduces specific facts sufficient to require the granting of Defendant's motion. United States v. Batiste, 868 F.2d 1089, 1093 (9th Cir. 1989) (where "defendant, in his motion to suppress, failed to dispute any material fact in the government's proffer, ... the district court was not required to hold an evidentiary hearing"); United States v. Moran-Garcia, 783 F. Supp. 1266, 1274 (S.D. Cal. 1991) (boilerplate motion containing indefinite and unsworn allegations was insufficient to require evidentiary hearing on defendant's motion to suppress statements); Crim. L.R. 47.1.

Requiring a declaration from a defendant in no way compromises Defendant's constitutional rights, as declarations in support of a motion to suppress cannot be used by the government at trial over a defendant's objection. Batiste, 868 F.2d at 1092 (proper to require declaration in support of

Fourth Amendment motion to suppress); Moran-Garcia, 783 F. Supp. at 1271-74 (extending Batiste to Fifth Amendment motion to suppress).

Nor is it reasonable to object that a defendant will have less information that the government, and so should not be required to provide proof to support a motion. Batiste, 868 F.2d at 1092. At least in the context of motions to suppress statements, which require police misconduct incurred by defendant while in custody, defendant certainly should be able to provide the facts supporting the claim of misconduct.

The objection that 18 U.S.C. § 3501 requires an evidentiary hearing in every case is of no merit. Section 3501 requires only that the Court make a pretrial determination of voluntariness "out of the presence of the jury." Nothing in section 3501 betrays any Congressional intent to alter the longstanding rule vesting the form of proof on matters for the court in the discretion of the court. Batiste, 868 F.2d at 1092 ("Whether an evidentiary hearing is appropriate rests in the reasoned discretion of the district court.") (citation and quotation marks omitted).

2. The Government Has Adequate Proof to Support Rejection of a Motion to Suppress.

The Ninth Circuit has expressly stated that a government proffer based on the statement of facts attached to the complaint is alone adequate to defeat a motion to suppress where the defense fails to adduce specific and material facts. Batiste, 868 F.2d at 1092. As the Defendant in this case has failed to provide a declaration alleging specific and material facts, the Court would be within its discretion to deny Defendant's motion based solely on the statement of facts attached to the complaint in this case, without any further showing by the Government.

In this case, the Government has attached to this motion the statement of facts that accompanied the complaint. The government also has attached the Reports of Investigation in connection with Kennedy's prior arrests. See Exhibits A and B. These documents, though hearsay, may be considered by the Court in making pretrial rulings, Fed. R. Evid. 1101, and, as explained below, are sufficient to show at this stage that there is no legitimate issue as to Defendant's motions. Accordingly, because the Defendant has provided no competent evidence for the Court to believe that any genuine factual dispute exists on these questions, the Government asks that the Court deny Defendant's motions without prejudice, and without an evidentiary hearing.

3. Probable Cause Existed in This Case

Officers have probable cause for an arrest if "the facts and circumstances within their knowledge and of which they [have] reasonably trustworthy information [are] sufficient to warrant a prudent man in believing" that the defendant committed an offense. Hunter v. Bryant, 502 U.S. 224, 228, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991) (citing Beck v. Ohio, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964)). The "collective knowledge" of investigating officers may be used to support probable cause to arrest. United States v. Del Viso, 918 F.2d 821, 825-26 (9th Cir. 1990).

Information obtained from an informant, together with the "totality of facts and circumstances," can support a probable cause determination. Illinois v. Gates, 462 U.S. 213 (1983). If the informant has provided accurate information in the past, he may be presumed trustworthy on subsequent occasions. United States v. Alexander, 761 F.2d 1294, 1300 (9th Cir. 1985). Moreover, an informant's reliability may be demonstrated through independent police corroboration of the information provided. United States v. Freitas, 716 F.2d 1216, 1222 (9th Cir. 1983).

In this case, there was sufficient probable cause to arrest Kennedy, because, according to the sworn Statement of Probable Cause, (1) an informant told Border Patrol that agents were being smuggled at the campground from the trailer, (2) agents corroborated that information when they apprehended the aliens in the vehicle driven by co-defendant Doss, and (3) Kennedy gave consent to the agent to enter and search the trailer. See Probable Cause Statement ("Exhibit A"), at 1. During a search of the trailer, agents found two aliens hiding in the bathroom; both agents admitted to being here illegally. Id. The agents then arrested Kennedy, who later made statements. Because the entry and search was consensual, the court should deny the motion to dismiss the indictment and/or suppress statements under the Fourth Amendment.

4. The Motion to Suppress the Identification Should Be Denied

Defendant argues that an "out-of-court identification" during a photographic lineup was improperly tainted because Kennedy and a material witness, Maria Martinez, were placed in the same room following his arrest. However, Kennedy has not supported the allegations with a declaration, or any other competent evidence. Moreover, witness Martinez did not make an out-of-court identification of Kennedy from the photographic lineup. The motion should be denied.

5. The Knock-Notice Rule Did Not Apply In This Case

Defendant argues that agents did not comply with the knock-notice requirement. This allegation is without merit. First, it is not supported by any declaration or any evidence whatsoever. Second, as noted in the attached Probable Cause Statement, the agents entry into the trailer was not forcible, but consensual. Therefore, there is no knock-notice requirement. See United States v. Bynum, 362 F.3d 574, 579 (9th Cir. 2004) (knock-notice requirement applies when entry into a dwelling pursuant to a search warrant is "forcible").

6. There Is No Evidence That The Consent Was Involuntary

Defendant contends that agents did not obtain "voluntary" consent to the search of the trailer, because permission to enter was never asked. See Defendant's Motion at 23. Defendant does not introduce any evidence in support of his contention. Moreover, the United States has put forth evidence, in the Probable Cause Statement, that Defendant voluntarily; it states that the agent "asked for and was granted consent to enter the premises and search for more illegal aliens by Matthew Kennedy." See Probable Cause Statement, at 1. Accordingly, Defendant's motion should be denied.

7. Defendant's Motion to Suppress Statements and Evidence Obtained at Prior Arrests, On Grounds that Agents Did Not Have Probable Cause And Failed To Comply With *Miranda*, Should Be Denied

Defendant argues that statements and evidence obtained during his prior arrests on January 13, January 27, February 7, and February 14, 2008, should be suppressed, because there was no probable cause and agents did not comply with Miranda. Defendant has not provided any evidence (aside from bare allegations in a brief) in support of this motion. Moreover, as exhibited in the attached Reports of Investigation ("Exhibit B"), the United States has produced *prima facie* evidence that agents on all four occasions complied with the Fourth Amendment and Miranda. As noted above, these reports, though hearsay, are admissible under Fed. R. Evid. 1101 in the context of a pretrial motion.

The reports establish that agents had probable cause to stop Kennedy on each of the four occasions and that all statements were preceded by Miranda warnings and waivers. See generally Reports of Investigation. Officers have probable cause for an arrest if "the facts and circumstances within their knowledge and of which they [have] reasonably trustworthy information [are] sufficient to warrant a prudent man in believing" that the defendant committed an offense. Hunter v. Bryant, 502 U.S. 224, 228, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991). A statement made in response to custodial interrogation is admissible under Miranda v. Arizona, 384 U.S. 437 (1966) and 18 U.S.C. § 3501 if a preponderance of the evidence indicates that the statement was made after an advisement of rights, and was not elicited by improper coercion. Colorado v. Connelly, 479 U.S. 157, 167-70 (1986) (preponderance of evidence standard governs voluntariness and Miranda determinations; valid waiver of Miranda rights should be found in the “absence of police overreaching”; “coercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’”). The attached Reports of Investigation on their face establish compliance with the requirements of the Fourth Amendment and Miranda. In the absence of any evidence – such as a sworn declaration – that the Fourth Amendment or Miranda was violated, Defendant’s motion to suppress should be denied without prejudice.

8. The Motion for Discovery of Wiretaps Evidence Should Be Denied

The United States respectfully submits that, to its knowledge, no wiretaps exist in this case.

9. The Defendants Motion for Joinder of Motions

The United States does not oppose the joinder motion.

IV

CONCLUSION

For the foregoing reasons, the Government respectfully requests that this Court deny Defendant’s motions except where unopposed.

DATED: May 23, 2008

Respectfully Submitted,

KAREN P. HEWITT
United States Attorney

/s/ Steven De Salvo

STEVEN DE SALVO
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff,	)	Criminal Case No. 08CR0650-JM
v.	)	CERTIFICATE OF SERVICE
MATTHEW CHARLES KENNEDY (1), Defendant.	)	

IT IS HEREBY CERTIFIED THAT:

I, STEVEN DE SALVO, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of the GOVERNMENT'S RESPONSE AND OPPOSITION TO DEFENDANT'S MOTIONS on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Joan Kerry Bader
John C. Ellis
Shaun Khojayan

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 23, 2008.

s/ Steven De Salvo

STEVEN DE SALVO